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Convention on the Elimination of all Forms of Discrimination Against Women

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COMMITTEE ON THE ELIMINATION OF DISCRIMINATION
AGAINST WOMEN
Eleventh session
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Item 7 of the agenda

ADOPTION OF THE REPORT

I. MATTERS BROUGHT TO THE ATTENTION OF STATES PARTIES

General recommendations

1. The Committee on the Elimination of Discrimination against Women brings to the attention of the States parties to the Convention on the Elimination of All Forms of Discrimination against Women, the following general recommendations:

General recommendation No. 19 (eleventh session, 1992)

Violence against women

Background:

1. Gender based violence is a form of discrimination which seriously inhibits womens' ability to enjoy rights and freedoms on a basis of equality with men.

2. At its eighth session 1989, CEDAW recommended that States should include in their reports information about violence and about measures introduced to deal with it (General Recommendation 12, eighth session).

3. At the tenth session in 1991, it was decided to allocate part of the eleventh session to a discussion and study on article 6 and other articles relating to violence towards women and the sexual harassment and exploitation of women. This subject was chosen in anticipation of the 1993 World Conference on Human Rights.

4. The Committee has concluded that the reports of States parties do not all adequately reflect the close connection between discrimination against women, gender based violence, and violations of human rights and fundamental freedoms. The full implementation of the Convention requires States to take positive measures to eliminate all forms of violence against women.

I. VIOLENCE AGAINST WOMEN IS A FORM OF DISCRIMINATION

5. The Committee recommends to States parties that in reviewing their laws and policies, and in reporting under the Convention, they should have regard to the following comments of the Committee concerning gender based violence.

GENERAL COMMENTS

Gender based violence is discrimination

6. The Convention in article 1 defines discrimination against women as meaning:

> "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." (article 1)

7. This definition of discrimination includes gender based violence - that is violence which is directed against a woman because she is a woman or which affects women disproportionately. It includes acts which inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

Gender based violence violates human rights

8. Gender based violence which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under specific human rights conventions is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include, inter alia

- the right to life,

- the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment,

- the right to the equal protection of humanitarian norms in time of international or internal armed conflict,

- the right to liberty and security of person,

- the right to the equal protection of the law,

- the right to equality in the family,

- the right to the highest standard attainable of physical and mental health, and

- the right to just and favourable conditions of work.

The Convention covers public and private acts

9. The Convention applies to violence perpetrated by public authorities. Such acts of violence may also breach that State's obligations under general international human rights law, and under other conventions, in addition to being a breach of this Convention.

10. It should be emphasized, however, that discrimination under the Convention is not restricted to actions by or on behalf of Governments (see articles 2.e, 2.f and 5). For example, under article 2.e the Convention calls on States to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights, or to investigate and punish acts of violence, and to provide compensation.

11. States parties should take appropriate and effective measures to overcome all forms of gender based violence, whether by public or private act.

COMMENTS ON SPECIFIC PROVISIONS OF THE CONVENTION

Articles 2 and 3

12. Under articles 2 and 3 States are to take all appropriate measures to overcome discrimination in all fields. The kind of measures to be taken are not restricted to the matters covered by specific articles of the Convention. Articles 2 and 3 establish a comprehensive obligation to eliminate discrimination in all its forms in addition to the specific obligations under articles 5-16.

13. States should ensure that laws against family violence and abuse, rape, sexual assault and other gender based violence give adequate protection to all women, respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention.

14. States should encourage the compilation of statistics and research about the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence.

Traditional attitudes, customs and practices (Articles 2.f, 5 and 10.c)

15. Traditional attitudes under which women are regarded as subordinate or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks, female circumcision. Such prejudices and practices may justify gender based violence as a form of protection or control of women. The effect of such violence to the physical and mental integrity of women deprives them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying (structural) consequences of these forms of gender based violence help to maintain women in subordinate roles, contribute to their low level of political participation, and to their lower level of education, skills and work opportunities. The full implementation of the Convention requires that effective measures be taken to overcome these attitudes and practices. States should introduce education and public information programmes to help eliminate prejudices which hinder women's equality (Recommendation No.3, 1987).

16. These attitudes also contribute to the propagation of pornography and the depiction and other commercial exploitation of women as sexual objects, rather than as individuals. This in turn contributes to gender based violence. Effective measures should be taken to ensure that the media respects and promotes respect for women.

17. States reports should identify the nature and extent of attitudes, custom and practices which perpetuate violence against women, and on the kind of violence which results. They should report the measures which they have undertaken to overcome violence and the effect of these measures.

Exploitation of prostitution and trafficking in women (Article 6)

18. Article 6 requires States parties to take measures "to suppress all forms of traffic in women and exploitation of prostitution of women."

19. Poverty and unemployment increase the opportunities for trafficking in women. In addition to established forms of trafficking there are new forms of sexual exploitation, such as sex tourism, the recruiting of domestic labour from developing countries to work in the developed world, and organized marriages between women from developing countries and foreign nationals. These practices are incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity. They put women at special risk of violence and abuse. Specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation.

20. Poverty and unemployment also forces many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence, because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence.

21. Wars, armed conflicts, occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women which require specific protective and punitive measures.

22. State reports should describe the extent of these problems and the measures, including penal provisions, preventive and rehabilitation measures, which have been taken to protect women engaged in prostitution or subject to trafficking and other forms of sexual exploitation. The effectiveness of these measures should also be described.

Violence and equality in employment (Article 11)

22. Equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment in the workplace.

23. Sexual harassment includes such unwelcome sexually determined behaviour as physical contacts and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment. Effective complaints procedures and remedies, including compensation, should be provided.

24. States should include in their reports information about sexual harassment, and on measures to protect women from sexual harassment and other forms of violence of coercion in the workplace.

Violence and health (Article 12)

25. Article 12 requires States to take measures to ensure equal access to health care. Violence against women puts their health and lives at risk. States should establish or support services for victims of family violence, rape, sexual assault and other forms of gender based violence, including refuges, specially trained health workers, rehabilitation and counselling.

26. In some States there are traditional practices perpetuated by culture and tradition which are harmful to the health of women and children. These practices include dietary restrictions for pregnant women, preference for male children and female circumcision or genital mutilation. States should take measures to overcome such practices and should take account of the Committee's recommendations on female circumcision (Recommendation No. 14) in reporting on health issues.

27. Compulsory sterilization or abortion adversely affects women's physical and mental health, and infringe the rights of "women to choose the number and spacing of their children" (16.1 (e)). States should ensure that measures are taken to prevent coercion in regard to fertility and reproduction, and to ensure that women are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control.

28. State reports should report on the extent of these problems and should indicate the measures which have been taken and their effect.

Rural women (Article 14)

29. Rural women are at risk of gender based violence because of the persistence of traditional attitudes regarding the subordinate role of women which persist in many rural communities. States should ensure that services for victims of violence are accessible to rural women and that where necessary special services are provided to isolated communities. Girls from rural communities are at special risk of violence and sexual exploitation when they leave the rural community to seek employment in towns. Measures to protect them from violence should include training and employment opportunities and the monitoring of the employment conditions of domestic workers.

30. States should report on the risks to rural women, the extent and nature of violence and abuse to which they are subject, their need for and access to support and other services and on the effectiveness of measures to overcome violence.

Family violence (Article 16)

31. Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence described under article 5 which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men, in situations of financial difficulties, can be a form of violence and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality. Measures which are necessary to overcome family violence include:

- criminal penalties where necessary and civil remedies in case of domestic violence,

- legislation to remove the defence of honour in regard to the assault or murder of a female family member,

- services to ensure the safety and security of victims of family violence, including refuges, counselling and rehabilitation programmes,

- rehabilitation programmes for perpetrators of domestic violence,

- support services for families where incest or sexual abuse has occurred.

32. States should report on the extent of domestic violence and sexual abuse, and on the preventive, punitive and remedial measures which have been taken.

II. MEASURES NECESSARY TO OVERCOME VIOLENCE

In light of these comments, the Committee recommends:

1. That States take all legal and other measures which are necessary to provide effective protection of women against gender based violence, including, inter alia:

(a) effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including inter alia violence and abuse in the family, sexual assault and sexual harassment in the workplace;

(b) preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women;

(c) protective measures, including refuges, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence.

2. That States report on all forms of gender based violence, and that such reports include all available data about the incidence of each form of violence, and about the effects of such violence on the women who are victims.

3. That States reports include information about the legal, preventive and protective measures which have been taken to overcome violence against women, and on the effectiveness of such measures.

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* For the discussion, see chap. .....

General recommendation No. 20 (eleventh session, 1992)

Reservations

Decision of CEDAW on reservations to the Convention

1. The Committee asks its chairperson, when taking part in the Prep. Com for the World Conference on Human Rights, to raise on the agenda of the World Conference the global issue of reservations to Human Rights Conventions. The Women's Convention has the highest number of reservations of all the International Human Rights Treaties. Most of the reservations are worded so generally that it is difficult to determine what in fact is being reserved and what impact the reservations would have on the obligations to eliminate discrimination against women assumed by reserving countries.

2. The aim should be to bring the question of reservations to the attention of the World Conference in order to strengthen the implementation of these Conventions.

General recommendation concerning reservations

CEDAW recalling the decision of the Fourth Meeting of States parties on reservations to the Convention under Article 28.2, which was welcomed by General Recommendation no. 4 of CEDAW, invites States parties:

in connection with the preparation of the World Conference on Human Rights in 1993 to raise the question of the validity and the legal effect of reservations to the Convention on the Elimination of All Forms of Discrimination against Women in the context of reservations to other Human Rights Treaties. States parties concerned should consider such reservations with a view to strengthening the implementation of all Human Rights Treaties.

They also might wish to consider introducing a procedure on reservations to the Convention on the Elimination of All Forms of Discrimination against Women comparable with those of other Human Rights Treaties.

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* For the discussion, see chap. .....

V. WAYS AND MEANS OF IMPLEMENTING ARTICLE 21 OF THE CONVENTION

1. At its 202nd meeting on 29 January 1992, the Committee considered item 3 of its agenda on the basis of the report of working group II. The coordinator of Working Group II briefly outlined the content of the document CEDAW/C/WG II/1992/WP.12 containing the report of the group. The topics that were before the Working Group included pending recommendations which had been deferred to the eleventh session of the Committee, 1/ Article 6 and other articles related to violence (CEDAW/C/WGII/1992/WP.3 and CEDAW/C/1992/4), a response to the report of the Expert Group Meeting on Violence Against Women, 2/ (EGM/VAW/1991/1 and CEDAW/C/1992/8/Corr.1), newly tabled recommendations on participation of women in politics and on women's rights to use their own name (CEDAW/C/WGII/1992/WP.5), and on gender dimension of development projects (CEDAW/C/WG II/1992/WP.10).

2. As a matter of priority, the working group had agreed to put forward for plenary discussion by all members of the Committee a general recommendation on violence against women (CEDAW/C/WG II/1992/WP.6/Rev.2), and further a decision and a general recommendation concerning reservations made by States parties upon ratification of the Convention (CEDAW/C/WGII/1992/WP.9).

3. The coordinator reported that, in order to prepare the draft general recommendation on violence against women including general comments, the working group had done a step-by-step analysis of the articles of the Convention in view of their relevance to issues relating to violence against women and to legal and other measures to prohibit and prevent it and to compensate for it. Comments by a representative of the ILO were included.

4. The Committee adopted the draft general recommendation 19 on violence against women as amended and the draft decision and general recommendation 20 on reservations to the Convention.

5. Based on the suggestions made by Working group II, the Committee decided that a general recommendation on violence against women including general comments could be regarded as <u>one</u> response to the Expert Group Meeting on Violence Against Women. Concerning the Expert Group's suggestion of Optional Protocols to the Convention on the Elimination of All Forms of Discrimination against Women, the Committee held the view that neither a substantive nor a procedural Optional Protocol to the Convention was desirable for the following reasons:

1/ (Mentioned in paragraphs 399, 403, 404 of the report of the tenth session).

2/ Expert Group Meeting on Violence Against Women held in Vienna from 11 to 15 November 1991 in accordance with Economic and Social Council resolution 1991/18.

- A substantive Optional Protocol regarding merely violence against women would undermine the importance of other topics of the Convention which would then need to be addressed in further additional Protocols. Most members agreed that general comments made by the Committee on the articles of the Convention would assist States parties in implementing the Convention by clarifying its scope;

- A procedural Optional Protocol, again, should not concentrate on merely one aspect of the Convention, but should cover all aspects of the Convention. Such a protocol could be considered at a future time as an instrument strengthening the Convention;

- The reasons against a substantive or a procedural Optional Protocol on violence against women, as mentioned above, spoke also against a combined substantive and procedural Optional Protocol on violence against women;

- The Expert Group's suggestion concerning the strengthening of the existing procedures for communications in the Commission on the Status of Women was welcomed by some members of the Committee.

6. It was decided that all pending and newly tabled recommendations as well as CEDAW/C/WGII/1992/WP.3 on Article 6 would be included as part of general comments on individual articles of the Convention to be prepared by members of the Committee with the assistance of the Secretariat. The drafts of these general comments should be submitted for discussion at CEDAW's twelfth session. The Committee asked the Secretariat to prepare and coordinate additional material on articles of the Convention, including material from other United Nations agencies and non-governmental organizations, and submit it to members of the Committee early enough to be considered by them in drafting general comments on individual articles.

7. The following members of the Committee volunteered to prepare draft general comments for the Committee's twelfth session, i.e.:

Ms. Bernard and Ms. Ukeje	on article 2
Ms. Ukeje and Ms. Schöpp-Schilling	on article 4
Ms. Laiou-Antoniou	on article 5
Ms. Bustelo and Ms. Aouij	on article 6
Ms. de Ramsey and Ms. Corti	on article 7
Ms. Aouij and Ms. Ukeje	on article 9
Ms. Nikolaeva	on article 11
Ms. Abaka and Ms. Walla-Tchangai	on article 12
Ms. Bernard and Ms. Forde	on article 15
Ms. Alfonsin, Ms. Quintos-Deles, Ms. Forde, Ms. Bernard	on article 16

9. It was agreed that priority should be given to Articles relevant to the family in preparation for the International Year of the Family 1994 and that preferably, two or more members should cooperate in the work, on each Article.

10. It was pointed out that the Committee could - at a future time - compare the reservations States parties have made to the Convention on the Elimination of All Forms of Discrimination Against Women and to other human rights conventions.